

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

DIANNE M. WALCK, : CIVIL ACTION NO. 1:15-CV-1265  
: Plaintiff : (Chief Judge Conner)  
: :  
: v. :  
: :  
NANCY A. BERRYHILL, Acting :  
Commissioner of Social Security,<sup>1</sup> :  
: :  
: Defendant :  
:

**ORDER**

AND NOW, this 8th day of August, 2017, upon consideration of the report (Doc. 14) of Magistrate Judge Gerald B. Cohn, recommending that the court deny the appeal of Dianne M. Walck (“Walck”) from the decision of the administrative law judge denying Walck’s application for a period of disability and disability insurance benefits, and the court noting that Walck filed objections (Doc. 15) to the report, and the Commissioner of Social Security (“Commissioner”) filed a response (Doc. 16) thereto, and, following a *de novo* review of the contested portions of the report, see Behar v. Pa. Dep’t of Transp., 791 F. Supp. 2d 383, 389 (M.D. Pa. 2011) (citing Sample v. Diecks, 885 F.2d 1099, 1106 n.3 (3d Cir. 1989); 28 U.S.C. § 636(b)(1)(C)), and applying a clear error standard of review to the uncontested portions, see Cruz

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<sup>1</sup> Carolyn W. Colvin (“Colvin”) was Acting Commissioner of Social Security when the instant action was filed against her in her official capacity. On January 23, 2017, Nancy A. Berryhill succeeded Colvin as Acting Commissioner. Pursuant to Federal Rule of Civil Procedure 25(d), Nancy A. Berryhill is substituted as the defendant in this action. See FED. R. CIV. P. 25(d).

v. Chater, 990 F. Supp. 375, 376-78 (M.D. Pa. 1999), the court being in agreement with Judge Cohn that the decision of the administrative law judge is “supported by substantial evidence,” 42 U.S.C. § 405(g); Fargnoli v. Massanari, 247 F.3d 34, 38 (3d Cir. 2001), and finding Judge Cohn’s analysis to be thorough, well-reasoned, and fully supported by the record, and further finding Walck’s objections to be without merit and squarely addressed by the report,<sup>2</sup> it is hereby ORDERED that:

1. The report (Doc. 14) of Magistrate Judge Cohn is ADOPTED.
2. The decision of the Commissioner of Social Security (“Commissioner”) denying the application for a period of disability and disability insurance benefits of Dianne M. Walck (“Walck”) is AFFIRMED.
3. The Clerk of Court shall enter judgment in favor of the Commissioner and against Walck as set forth in paragraph 2.
4. The Clerk of Court is directed to CLOSE this case.

/S/ CHRISTOPHER C. CONNER

Christopher C. Conner, Chief Judge  
United States District Court  
Middle District of Pennsylvania

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<sup>2</sup> Walck raises a new argument based upon the Third Circuit’s decision in Doak v. Heckler, 790 F.2d 26 (3d Cir. 1986), for the first time in her objections. (See Doc. 15 at 3-7). This argument was available to Walck at the time she filed this case and submitted her opening brief. We accordingly consider Walck’s new argument to be waived for failure to raise it before the magistrate judge in the first instance. See Jimenez v. Barnhart, 46 F. App’x 684, 685 (3d Cir. 2002) (citing Laborers’ Int’l Union of N.A. v. Foster Wheeler Corp., 26 F.3d 375, 398 (3d Cir. 1994)); see also Kelly v. Wells Fargo Bank N.A., No. 1:13-CV-2298, 2015 WL 1333264, at \*9 (M.D. Pa. Mar. 25, 2015) (Conner, C.J.) (collecting cases).